

REMARKS

Claims 10-18 are pending in this case, with claims 10, 11, 13, 14, 16, and 17 being amended. Claims 11-13 and 17 were rejected under Section 112 as being indefinite, claims 10-12 and 18 stand rejected for obviousness under Section 103, and claims 14-16 have been indicated to contain allowable subject matter. Before turning to the rejections, Applicant notes that claim 14 has been rewritten in independent form (without reference to first and second sets of fins of claim 10, as claim 14 was already limited to the "second set" thereof, and without making specific reference to the "second set" as that is now superfluous), such that it is respectfully submitted that claims 14-16 are now in condition for allowance.

Turning to the Section 112 rejections, claims 11-13 and 17 stand rejected because of an obvious typographical error in the claims. As presented they were erroneously indicated to be dependent on canceled claim 1. They should have been dependent on claim 10, which error has now been corrected, thus mooted the Section 112 rejections.

Claims 10-12 and 17 are rejected under Section 103 as allegedly being unpatentable over JP 11-037486 ("Ogata") in view of JP 11-311489 ("Atsugi"). Examiner also rejected claim 18 as allegedly being unpatentable over Ogata and Atsugi further in view of Naughton U.S. Patent No. 6,169,851 ("Naughton").¹

¹ In the Official Action, the assertion is made that Ogata and Atsugi are "admitted prior arts as provided on I.D.S. of 2-14-2006." Applicant disagrees. In the first instance, the IDS was filed with the present application on April 24, 2006, and not February 14, 2006. Moreover, it is clear as a matter of law that listing a reference on an IDS is not an admission that the reference is prior art against the claims. MPEP §2129(IV). See also 37 CFR 1.97(h) and *Riverwood Int'l Corp. v. R.A. Jones & Co.*, 66 USPQ2d 1331, 1337-38 (Fed. Cir. 2003). Thus, no admission has been, nor needs to be made, regarding the status of Ogata or Atsugi as prior art. Nonetheless, and for sake of completeness, Applicant traverses the rejections on the merits.

Claim 10 recites a plurality of generally vertically extending radiating fins being linked in turn, each radiating fin being hollow and sheet-like and having at least two grooves therein for oil, the plurality of fins being similarly shaped and dimensioned. The Examiner relies on Ogata as allegedly teaching these features. However, the fins 2, 11 of Ogata are not similarly shaped and dimensioned. Instead, adjacent fins of Ogata alternate between generally straight fins 2 and wave-shaped fins 11. Indeed, Ogata teaches away from fins that are similarly shaped and dimensioned, because the invention of Ogata is specifically directed to the use of these alternating fin shapes to increase the warming ability of the heater (*see* Ogata ¶0007). Atsugi does not rectify this deficiency. The fins 21 of Atsugi also do not extend generally vertically as claimed.

Further, the teachings of Atsugi are incompatible with the teachings of Ogata. While Ogata is directed toward wave-shaped fins 11 between straight fins 2 in a heater, Atsugi is directed toward the use of crevices within the fin 21 of an automobile cooler in order to line up the holes associated with the multiple fins 21. The invention taught by Atsugi is thus not appropriately applied to the invention taught by Ogata, and one skilled in the art would not combine the references.

Additionally, independent claim 10 is amended to clarify that the upper and lower ends of each of the plurality of fins extend in respective vertical planes, such that (a) for each fin in the first set of fins, the respective vertical planes thereof are not coplanar, and (b) for each fin in the second set of fins, the respective vertical planes are generally coplanar (with the middle portion of each fin being curved to form a convex configuration toward a side as presented in claim 10 prior to this Response). The foregoing amendment was made to clarify the claim as Examiner was apparently misreading the language of the claim as presented prior to this

Response. It should now be clear that Ogata in view of Atsugi does not teach what is claimed, as neither the fins of Ogata nor the fins of Atsugi include an upper end extending in a vertical plane or a lower end extending within a vertical plane.

Applicant further notes that neither Ogata nor Atsugi teach fins having at least two grooves therein for oil. The Examiner does not identify what teaching in either Ogata or Atsugi teaches this feature. Should Examiner maintain the rejection, Applicant respectfully requests that Examiner identify where each feature in the rejected claims corresponds to a feature in the cited references.

For each of the reasons cited above, Applicant respectfully traverses the rejection of independent claim 10 and claims 11, 12, and 17 which depend therefrom.² The foregoing should also moot the rejection of dependent claim 18 as the primary basis of the rejection thereof, Ogata and Atsugi, fail to render obvious claim 10 from which claim 18 depends, and the additional citation to Naughton (which was cited for adding wheels) does not cure that failure.³

² While it is not considered necessary at this time to separately argue the dependent claims, it is noted that the art cited by Examiner against dependent claims 11, 12, and 17 lacks the features recited therein. For example, Examiner does not identify any teaching in either Ogata or Atsugi of the curved portion including two oppositely-directed folds as called for in claims 11 and 12. Similarly, Examiner does not identify any teaching in either Ogata or Atsugi directed to a back cover, the electric-control box being associated with a leftmost radiating fin, the back cover being associated with a rightmost radiating fin, and the electric-control box and the back cover including heat radiating holes, as called for in claim 17.

³ In any event, it is respectfully submitted that Naughton is not properly combinable with either Ogata or Atsugi to provide the wheels mounted in relation to a bottom of the fins as called for in claim 18. Ogata is specifically directed to a miniaturized space heater, for which wheels are not helpful or appropriate. Atsugi is directed to a cooling device within a system such as an automobile, such that the addition of wheels to the device would be superfluous and entirely inappropriate. It is respectfully submitted that a person of ordinary skill in the art would not apply wheels to the inventions of either Ogata or Atsugi.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the rejections are in error and that the claims as now pending are patentable over the prior art. Accordingly, it is respectfully submitted that the case is in condition for allowance, and a formal Notice of Allowance is thus respectfully solicited.

Applicant submits that all outstanding issues in the Official Action have been addressed, and requests prompt, favorable action on the pending claims. If any issues remain, Examiner is respectfully requested to telephone undersigned counsel in an effort to promptly resolve same.

It is believed that no fees other than for the Extension of Time (which are being submitted concurrently herewith) are due for this filing. However, if any other fee is deemed due, please consider this as an authorization to charge Deposit Account 23-3000 therefor.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By /kurt l Grossman/
Kurt L. Grossman
Reg. No. 29,799

Wood, Herron & Evans, L.L.P.
2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202-2917
Voice: (513) 241-2324
Facsimile: (513) 241-6234